

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Consumers are believed to equate softness with freshness for certain bakery products. Maintaining softness is particularly an issue after a bakery product has been stored. While anti-staling ingredients can be added, the results obtained with these may not be entirely satisfactory.

The invention is directed to the discovery that bakery products comprising a sterol and/or stanol ester in combination with a selected emulsifier are soft and show reduced staling upon storage. The weight ratio of emulsifier to sterol or stanol ester ranges from 1:1 to 1:50.

Claims 1, 8 and 9 have been canceled without prejudice. The remaining dependent claims have been amended to depend from claim 10.

Claims 10, 2 and 3 have been amended in view of the informality asserted by the Office. Applicants do not wish to close the claims to the possibility of additional emulsifiers and thereby to invite the possibility that infringement could be avoided by the inclusion of additional emulsifiers. Therefore, applicants wish to avoid the word "consisting" and to claim a composition which includes one or more of the recited emulsifiers, leaving open the possibility of inclusion of further non-recited emulsifiers. It is submitted that modern patent practice does not require the Markush language, and it should not be required to exclude other ingredients unless the prior art so requires. It is submitted that the amended claim language is clear and sufficiently definite that one

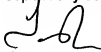
of ordinary skill can ascertain whether he/she is infringing, so it is respectfully requested that the Section 112 rejection be withdrawn.

Independent Claim 10 is directed to a bakery product comprising flour and from 0.5 to 15 wt% on flour of sterol and/or stanol fatty acid ester and from 0.1 to 1 wt% of emulsifier on flour.

The claims are rejected as anticipated by Yuan et al. US Patent No. 6,190,720. In order for an anticipation rejection to be sustained, all of the features of the claim must be present in the reference, either explicitly or inherently (inevitably). The Office is unable to point to any teaching concerning the amounts of the recited components used in baked products. Rather, the Office points to a teaching concerning "typically appropriate ranges" for food ingredients. However, Yuan et al. indicate that the amount of food ingredient incorporated into a food composition will depend on the formulation of the food product. Therefore, it is submitted that the Office has failed to establish that the claims are anticipated, and it is respectfully requested that the section 102 rejection be withdrawn.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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